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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of)

THOMAS N. TOOMBS et al.)

Serial No.: 09/186,064)

Filed: November 4, 1998)

For: MULTIPLE MODE)
COMMUNICATIONS SYSTEM)

Group Art Unit: ~~1082~~ 1700 MAIL ROOM

Examiner:
Myers, P.

San Francisco, California

Assistant Commissioner for Patents
Washington, D.C. 20231

CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Assistant Commissioner for Patents, Washington, D.C. 20231 on September 22, 2000.

Sandy Ellsworth
Sandy Ellsworth

9-22-00
Date

TRANSMITTAL

Sir:

Transmitted herewith is a Request for Reconsideration of Finality in the above-referenced application.

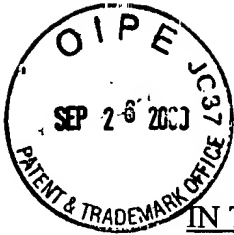
No fee is believed to be required, however, the Commissioner is hereby authorized to charge any additional fees which may be required, or credit any overpayment, to Deposit Account No. 13-1030. A duplicate copy of this sheet is enclosed.

Respectfully submitted,

Dated: September 22, 2000.

Michael G. Cleveland
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Atty. Docket: HARI.127US0



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REQUEST FOR RECONSIDERATION OF FINALITY

Sir:

These remarks are in response to the Office Action dated August 22, 2000, which is declared final. This Conclusion of the Office Action states in paragraph 8 that

Applicant's declaration withdrawing the MultiMediaCard specification Version 1.4 from prior art necessitated the new ground(s) for rejection presented in the present Office action. Accordingly, **THIS ACTION IS MADE FINAL.**

This declaration of finality is respectfully submitted to be in error and it is requested that it be withdrawn.

Section 706.07(a) of the MPEP states in its second paragraph:

Under present practice, second or any subsequent actions on the merits shall be final, except where the *examiner introduces a new ground of rejection* that is neither necessitated by the applicant's amendment of the claims nor based on

information submitted in an information disclosure statement Furthermore, *a second or any subsequent action on the merits in any application or patent under going reexamination proceedings will not be made final if it includes a rejection, on newly cited art*, other than information submitted in an information disclosure statement *of any claim not amended ...*[emphasis added]

The applicants have not amended any of the pending claims. As stated in the present Office Action, the Office Action itself introduces new grounds of rejection based newly cited art (U.S. Pat. No. 5,349,649 of Iijima) which was *not* submitted in an information disclosure statement, but instead introduced by the Examiner.

Therefore, it is respectfully submitted that the making of the present action final is in error and that the finality should be withdrawn. By simultaneously introducing new grounds and making the action final, the applicant may neither respond to the newly cited art nor amend the claims in response should this be necessary.

Dated: September 22, 2000

Respectfully submitted,

By: WGC
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